It is further insisted that the court erred in overruling appellant's motion for a new trial for the reason that the evidence failed to show that appellant knowingly had in his possession the meat alleged to have been in his possession with intent to sell the same for human food. The defense was that appellant purchased the carcass of a cow for the purpose of getting its hide and of using the remainder for fertilizer, and it is now insisted that there is an entire failure of evidence showing or tending to show that he directed or knew of its use for any other purpose. An extended review in this opinion of the testimony given at the trial can serve no good purpose, and we deem it sufficient to say that the record contains evidence from which the jury was justified in finding that after the dead cow was brought to appellant's plant, its flesh, or a large portion thereof, was boned, pickled, ground, and made up into minced or pressed ham. The evidence further shows that the meat inspector for the city of Indianapolis found the dead animal on the floor of appellant's killing room and protested to appellant personally; that the latter agreed to tank the carcass for fertilizer as soon as possible; that he not only failed to do so, but actually directed one of his employees "to dress it up in the usual manner"; that the beef later went into the cooling room, and a part of it, at least, was made up into minced ham. The evidence fully justifies the jury in finding that appellant must have had knowledge of these facts, and for the reasons herein asserted the judgment of conviction should not be disturbed.

Judgment affirmed.

MASSACHUSETTS SUPREME JUDICIAL COURT.

The Population of a City Must be Proved by an Official Census.

McLAUGHLIN *v.* BUNZEL. (Apr. 16, 1915.)

Under the statute it was necessary to ascertain the population of the city of L. in order to determine whether slaughterhouse licenses should be issued by the board of health or by some other authority. The court held that for this purpose the population could be proved only by official records, and that it could not be proved as an ordinary fact.

Bill in equity by the health commissioner of the Commonwealth to enjoin defendant from carrying on the business of slaughtering neat cattle, sheep, and swine in the town of Lexington. The defendant had received a license from the board of health of the town, but it was contended that the town had a population of less than 5,000 and that such license should have been issued, if at all, by the board of selectmen. In the supreme judicial court, Pierce, J., reported the case to the full court.

RUGG, C. J.: It is provided by R. L., ch. 75, sec. 100, as amended by Stat. 1911, ch. 297, sec. 2, that "The mayor and aldermen, selectmen, or such other officers as they shall designate, or in a town having a population of more than 5,000, the board of health, if any, may annually issue licenses to carry on the business of slaughtering neat cattle, sheep, or swine." The respondent has carried on such business under the supposed protection of a license issued by the Board of Health of Lexington. The jurisdiction of that board is challenged on the ground that Lexington, according to the last official census taken, had a population of less than 5,000. The respondent offered to show by a count made by the assistant postmaster of Lexington that the population of the town was more than 5,000 in 1914. The crucial point is whether the census is the sole test for determining population for the purposes of this statute, or whether population can be proved as any ordinary fact in a proceeding in court.

The statute is silent as to the method of determining population under these circumstances. A decennial census is taken by the Commonwealth in those years divisible by 5 and not by 10, and by the United States in those years divisible by 10, so that there is an official census every 5 years. There is no machinery for an authoritative count at any other times. Formerly it was provided by R. L., ch. 107, sec. 3, that a special enumeration of the inhabitants of cities and towns should be made by the

chief of the bureau of statistics of labor at any time at the request of the mayor and aldermen of a city and of the selectmen of a town.

But that was repealed by Stat. 1908, ch. 90. That is a strong indication of a legislative purpose to depend wholly upon the official figures of the latest census. It is important that there should be a certain and easily accessible method of determining where the power to appoint rests in cases like the present. There can be no such method unless an official census is resorted to. There well may be several towns where the population is near to 5,000. If the census is not the standard, then in case of dispute between the selectmen and the board of health, or of real doubt as to which board was vested with jurisdiction to act, there would be no way of settling the fact decisively so as to bind everybody. The law makes no provision for a count at the expense of the town. No appropriation could be made from the town treasury for such purpose. It can not be presumed that the legislature intended that a matter touching the public health so nearly as the preparation of a generally used food should be liable to be thrown into litigation in large communities in successive years. Any other means of determining population than by resort to authentic public records would open the door to great uncertainty and to the possibility or likelihood of mistake based on undue zeal, incompetence, or even deceit.

Constitutional mandates compel the periodical taking of the census. Large sums of public moneys are spent to this end. The population statistics revealed by it bear the stamp of official regularity and accuracy. It is the almost universal source of reliable information as to numbers of inhabitants. A census is taken at such frequent intervals that no hardship can result from reliance upon it.

The inference is irresistible that in this matter the general court intended that the population shown by the last State or National census must be used to determine which board has jurisdiction. Arguments as to statutory interpretation which have been urged with force by the defendant, and which might be of weight in close cases, are of slight moment in face of the overwhelming practical considerations to the contrary. Decisions upon somewhat kindred facts are to this effect. See In re Sewer Assessment for Passaic, 54 N. J. L., 156; Adams *v.* Elwood, 176 N. Y., 106. No question is presented as to the census of summer residents under R. L., ch. 100, sec. 13.

It follows that the Board of Health of Lexington had no jurisdiction in the premises, and that the defendant ought to have made application to the selectmen. Injunction is to issue restraining the defendant from acting under the license issued by the board of health.

MASSACHUSETTS SUPREME JUDICIAL COURT.

Occupational Diseases—Death Resulting from Heavy Lifting—Workmen's Compensation Law.

In re FISHER, 108 N. E. Rep. 361. (April 1, 1915.)

Deceased had been employed at work which required heavy lifting. In the opinion of the medical examiner, death resulted from dilatation of the heart caused by the abrupt lifting of a heavy load. There was also evidence showing that the deceased had "heart disease of the valvular type." The court held that the evidence was sufficient to sustain a finding that the injury to the employee arose out of and in the course of his employment.

PIERCE, J.: The insurer contends that the finding of the majority of the committee of arbitration as affirmed by the industrial accident board and in turn by the superior court is not supported by the evidence reported. As all the material evidence is reported, this contention is open. (Brightman's case, 220 Mass., 17, 107 N. E., 527.)

On the morning of the day he died the deceased had been at work helping to erect a stone crusher. This work involved some heavy lifting. About noontime, preparatory to the unloading of a steam roller from a railroad flat car, be made six or seven trips from the car to a pump about 400 feet away, and in each instance, after filling two